

Carlson, Greg Ex. 62

From: Carlson, Greg
Sent: Tuesday, July 23, 2013 3:48 PM
To: Peter Felitti
Subject: FW: Blue Lake stuff in 2 emails given size limitations (UNCLASSIFIED)
Attachments: 2012 Orthos.png; 2005 IN Map Ortho 1M.png; 2007 NAIP.png; 2008 NAIP.png; 2010 NAIP.png

FYI

-----Original Message----- Ex. 58
From: Matthews, Scott A LRL [mailto:Scott.A.Matthews@usace.army.mil]
Sent: Monday, July 22, 2013 12:57 PM
To: Carlson, Greg
Cc: MARTY MAUPIN
Subject: RE: Blue Lake stuff in 2 emails given size limitations (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Greg,

Good afternoon. I apologize for the delayed response. I was out of the office on Friday. I have looked at the information you emailed and I received the pictures you sent via hard copy this afternoon. The "story" sounds correct in that he has always said that he has cleaned up the site that was run down. However I do not believe the information he submits in his case supports the arguments.

Regarding the area to the north of where the Gazebo is, he backs up the area as being dry with a picture of someone mowing. We all know that wetlands can be mowed and during the summer dry out. I have attached several aerial photos that I just looked at from the Indiana GIS data Portal. You can see that in the 2005 aerial, there is no lake access (dock). In 2007 NAIP, it looks wetter but the lake access is now present. In the 2008 NAIP the Gazebo and other roads show up. You can also see that on the west part of that wetlands, the other trailers show up between 2007 and 2008 photos. There may have been fill in this area prior to the 2007 however, based on the aerials, it was still wet. As you say, may be a case where there is fill on already filled wetlands.

My main concern is the western portion of the site. Marty's email this morning provides good information. They state that the shot taken in A-4 has been there since 2002. If this is supposed to be the extreme west portion of the fill, then there is no way. Examining the attached 2007 and 2008 NAIP, there is no road way or trailers there. In the 2010 NAIP aerial they clearly show up with trailers. And they are very clear in 2012 Ortho which was taken with the leaves off. An argument may be made that the 2007 and 2008 aerials have trees and can't see the roads. However, if you look at the 2005 ortho (taken with leaves off) there is nothing.

While some of the fill may be older than five years, a good majority of it has show up after 2007.

Thanks
Scott

-----Original Message-----

Ex 56

From: Carlson, Greg [mailto:carlson.greg@epa.gov]

Sent: Thursday, July 18, 2013 4:43 PM

To: Matthews, Scott A LRL

Subject: Blue Lake stuff in 2 emails given size limitations

Gentlemen: I've looked this over and couldn't support (no restoration), but some of the photos provided need to be examined in their originals to see if they have any merit regarding prior filling. There is the possibility of old fill not converting the area filled to upland, but just a less wet disturbed wetland. Does this story he puts out sound anything like what you have heard from him on site?

Also, given the 5 yr. SOL (lawyers are telling us the SOL applies to injunctive relief, not just penalties), we may be hard pressed to get something for fill > 5 yrs old.

That 's where IDEM may have a better position, b/c you have a different SOL - pls. advise?

Let me know what you think , but I can't support no restoration nor a mitigated wetland in a giant patch of reed canary grass (besides its already wet and what credit could be obtained for 'enhancement' isn't worth it b/c the RCG will simply move in once the monitoring period is over).

Carlson, Greg

Ex. 62

From: Carlson, Greg
Sent: Tuesday, July 23, 2013 3:47 PM
To: Peter Felitti
Subject: FW: Docket No V-404-AO-13-10 (Blue Lake Campground)
Attachments: Blue Lake june 18 2008 MTM.JPG; Blue Lake July 1, 2007 MTM.JPG; Blue Lake September 5 2003 MTM.JPG; Blue Lake July 1, 2007 MTM2.JPG; 5-31-2011 Blue Lake Campground MTM.JPG; Blue Lake Campground Viol 2010 aerial MTM.JPG

FYI

Ex. 60
From: MAUPIN, MARTY [mailto:MMAUPIN@idem.IN.gov]
Sent: Monday, July 22, 2013 8:38 AM
To: Carlson, Greg
Subject: RE: Docket No V-404-AO-13-10 (Blue Lake Campground)

Greg,

See attached photos. Clearly fill was placed after 2002 and within the past 5 years. Go to Google Earth and use the timeline tool.

Marty Maupin
Office of Water Quality
Phone: 317-233-2471
E-Mail: mmaupin@idem.in.gov

Ex. 59
From: Carlson, Greg [mailto:carlson.greg@epa.gov]
Sent: Monday, July 22, 2013 8:58 AM
To: MAUPIN, MARTY
Subject: RE: Docket No V-404-AO-13-10 (Blue Lake Campground)

Marty: Statute of Limitations on legal street; USA has interpreted that as 5 yrs. From the date of discovery (of the violation) and applied it to penalties. However, recent setbacks in federal courts have ruled differently, if obscurely at times, that the clock starts the day the fill is placed and it applies to injunctive relief as well. We use to think, for injunctive relief, that every day the fill remains in place, is a new day of violation, i.e., the clock restarts – this language is in the Admin. Order we issued.

Regarding your first statement below, he is claiming that all was filled by someone else prior to his obtaining property in 2002.

Right now, I plan on analyzing what he submitted for veracity – may mean a trip to the USDA-NRVS/FSA offices in that county.

4.5
From: MAUPIN, MARTY [<mailto:MMAUPIN@idem.IN.gov>]
Sent: Friday, July 19, 2013 8:47 AM
To: Carlson, Greg; Scott A Matthews
Cc: Ressler, Terry
Subject: RE: Docket No V-404-AO-13-10 (Blue Lake Campground)

The statement that he has not done filling prior to 2002 is egregiously incorrect. Aerial photos clearly shows trees on the site to the west and obvious wetland near the gazebo after 2005. Additionally, the wetland mitigation plan is unacceptable. As you stated Greg it is existing wetland and nowhere near covers the acreage of impact. Also, I know what SOL means on the street but does it have different meaning for this situation. Where do want to go from here? I believe we can't back down from this one. This is a large fill on a lake. If we can't challenge/stop/ require restoration on this I don't know we have the ability to do any enforcement anywhere. Finally, all of the fill we pointed out was definitely wetland and not filled and he just put additional fill. The photos clearly show all of these areas were wetland.

Marty Maupin
Office of Water Quality
Phone: 317-233-2471
E-Mail: mmaupin@idem.in.gov

4.56
From: Carlson, Greg [<mailto:carlson.greg@epa.gov>]
Sent: Thursday, July 18, 2013 4:35 PM
To: MAUPIN, MARTY; Scott A Matthews
Subject: FW: Docket No V-404-AO-13-10 (Blue Lake Campground)

Gentlemen: I've looked this over and couldn't support (no restoration), but some of the photos provided need to be examined in their originals to see if they have any merit regarding prior filling. There is the possibility of old fill not converting the area filled to upland, but just a less wet disturbed wetland. Does this story he puts out sound anything like what you have heard from him on site?

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From: Felitti, Peter
Sent: Tuesday, July 09, 2013 8:08 PM

New fill in 2011 aerial

Ex. 60

**Wetland fully
returned in 2011.**



**Trees removed and
road and building
pads constructed** Ex.
60

**Wetland has
returned if it
was previously
disturbed at all.**

**Trees still there in
2007**
Ex. 60

**Wetland still there in
2007.**

Image USDA F
@ 20



**Walkway across
wetland in 2007**

Ex. 60



Trees still there in 2008

Ex. 60

**Appears some filling
has occurred in 2008.**

Image USDA

© 2011 Google

©2010 Google

Trestill there in 2003

Ex. 60

Wetland still there in 2003.

N Blue Lake Rd

Carlson, Greg

Ex. 61

From: Carlson, Greg
Sent: Monday, July 22, 2013 8:49 AM
To: MAUPIN, MARTY
Subject: RE: Docket No V-404-AO-13-10 (Blue Lake Campground)

Marty: I've done that so many times I'm sick of looking at the photos. You don't have to convince me. Note that all the exhibits in the Admin. Order are the same Google Earth photos seen in the timeline w/ the fill areas annotated. He's saying that pre-2002 fill made these areas upland, though we'd all agree that there certainly are photos showing wet signatures in these same areas after 2002. You'll note that they picked out one of our air photo interpretations as a 'board walk' rather than fill – course, this is further evidence of wetland in the area the board walk crosses. So, are aerial photographs enough to prove wetland - no, not in isolation. Is there evidence of prior filling uncovered in the sample points taken – not that I saw (we have 7 sample holes by my count).
